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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 ROBERT J. JONES, in Pro Per
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6 Plaintiff

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 ROBERT J. JONES,
10 Plaintiff,

Case No. C 073054 JSW

11 vs.

**PLAINTIFF'S RESPONSEIVE
BRIEF TO MOTION TO DISMISS
COMPLAINT AND SUPPORTING
DECLARATION, POINTS AND
AUTHORITIES.**

12 NAPA POLICE DEPARTMENT,
13 COUNTY OF NAPA, MICHELLE
14 JONES, THOMAS TOLER, dba
15 TOLER BAIL BONDS, JOSE ROSSI
16 , DOES 1-100 INDIVIDUALLY and
as , and EMPLOYEES OR AGENTS
OF THE CITY AND COUNTY OF
NAPA,
Defendants.

17 _____/
18 Plaintiff, ROBERT J. JONES, hereby responds to and opposes the
19 defendant's Motion to Dismiss as follows:

20 **II. (B), II. (C)** In Paragraphs II (B) and II. (C) of his
21 Memorandum of Points and Authorities, Defendant alleges that
22 that "Plaintiff's claim fails to state a claim upon which relief
can be granted against defendants..."

23 Defendant bases this allegation upon the "...two year statute of
24 limitations...", claiming that Plaintiff failed to file his
25 complaint in a timely manner, more specifically within two
26 years.

1 The two year period upon which Defendant relies in his motion,
2 commences on the March 15, 2005, (the day of Plaintiff's
3 arrest,) and terminates 2 years later on March 14, 2007.

4 Defendant's allegation that the 2 year statute of limitations
5 has tolled is based upon Plaintiff's filing of his complaint on
6 June 12, 2007, which is more than 2 years after the incident
7 which is the subject of the Plaintiff's claim.

8 Plaintiff alleges however that the commencement of the period
9 should not be the date of the incident. Prior to filing his
10 complaint in the United States Court, Plaintiff needed to
11 exhaust administrative remedies as required by law.

12 When an administrative remedy is required by statute, the
13 plaintiff is required to exhaust said remedy before filing any
14 action with the court. (Abelleira v. District Court of Appeals
15 (1941) 17 Cal.2d 280, 292.) The exhaustion doctrine is founded
16 upon concerns favoring administrative autonomy (i.e. the court
17 should not interfere with an agency determination until the
18 agency has reached a final decision) and judicial efficiency
19 (i.e. overworked courts should decline to intervene in
20 administrative disputes unless absolutely necessary). (Coachella
21 Valley Mosquito & Vector Control Dist. V. California Public
22 Employee Relations Board (2005) 35 Cal.4th 1072.) Exhaustion of
23 administrative remedies is a jurisdictional prerequisite to
24 resort to the court. (id.) Thus, failure to exhaust
25 administrative remedies deprives the court of jurisdiction
26 because jurisdiction remains vested in a different tribunal
27 until said remedies are exhausted.

28 Plaintiff, therefore filed administrative claims against the
City and County of Napa. The 2 year statute of limitations
period should therefore not commence until the Plaintiff's
administrative claims were denied. Prior to his administrative
claims being denied, Plaintiff could not file a judicial action,

1 nor could he determine whether or not his claims would be
2 satisfied by way of the administrative procedures. What's more,
3 the court had no jurisdiction over the matter until said
4 remedies were exhausted.

5 Plaintiff filed administrative claims on or before September 5,
6 2005. Said claims were denied on or about October 5, 2005. The 2
7 year period leading to the tolling of the statute of limitations
8 should therefore commence upon the denial of the Plaintiff's
9 administrative claims.

10 In [Addison v. State (1978)], the court found that "...the running
11 of the limitations period is tolled when an injured person has
12 several legal remedies and, reasonably and in good faith,
13 pursues one. This applies also to actions filed in federal court
14 but dismissed for lack of jurisdiction. [Addison v. State (1978)
15 21 Cal.3d 313.]

16 In Elkins v. Derby (1974) 12 Cal.3d 410, an injured man
17 commenced a worker's compensation action which was dismissed by
18 the WCAB more than one year after the injury after finding that
19 plaintiff was not covered as an "employee" and, therefore, not
20 entitled to benefits. When he subsequently filed a Superior
21 Court action to recover for his injuries, defendants asserted
22 that it was barred by the statute of limitation. In finding for
23 the plaintiff, the Supreme Court held that if the defendant is
24 not prejudiced by the delay, the running of the limitations
25 period is tolled when an injured person has several legal
26 remedies and, reasonably and in good faith, pursues one.

27 II (C.) In Paragraph II C., Defendant again bases his Motion
28 upon the tolling of the 2 year statute of limitations. Plaintiff
incorporates the declarations, allegations and Points and
Authorities stated in II (B) above in answer to Defendants.

Additionally, Plaintiff asserts that Plaintiff's claims are
based in part upon incidents which took place after June 12th,

1 2005 and therefore the 2 year period has not elapsed between the
2 date of these incidents and the date of Plaintiff's filing of
3 the complaint. Plaintiff requests that the court take judicial
4 notice of the allegations in his complaint, wherein allegations
are made of incidents which occurred after June 12th, 2005.

5 **II (C)** In Paragraph II(D) Defendant's counsel alleges that at
6 all relevant times, Defendant Jose Rossi acted within the course
7 and scope of his prosecutorial duties and therefore should enjoy
8 immunity from Plaintiff's claims.

9 Plaintiff's complaint alleges however that Defendant Rossi acted
10 outside the course and scope of his duty in that he knowingly
11 and frivolously charged Plaintiff with crimes which he of which
12 he personally knew the Plaintiff was innocent. If this
13 allegation is proven to be true, it is certainly a claim upon
14 which relief can be granted and therefore a matter for the trier
15 of fact to decide. There is therefore no basis upon which the
Complaint should be dismissed.

16 **III (E)** in Paragraph III(E) of his Memorandum of Points and
17 Authorities alleges that insofar as Defendants Rossi and the
18 County of Napa, "...Plaintiff's claim is so vague or ambiguous
19 such that a party cannot be reasonably required to frame a
response..."

20 Plaintiff argues that such is not the case. Plaintiff's
21 complaint describes specific acts of these Defendants or their
22 agents and/or employees which give rise to claims of assault,
23 battery, false imprisonment, conversion, malfeasance and other
24 intentional and negligent torts. Plaintiff's complaint describes
25 specific acts of prosecutorial misconduct as to Rossi. Said
26 complaint alleges that Plaintiff was falsely arrested, beaten,
27 threatened, and terrorized while in the custody of agents of
28 Defendants of the City and County of Napa. Whether or not these

1 allegations are true are again matters to be decided by the
2 triers of fact and not by way of a motion to dismiss.

3 In Paragraph III Defendant states that Plaintiff's complaint is
4 too vague and that Plaintiff should therefore be ordered by the
5 court to issue a more specific statement of his allegations.
6 Should the court find that Plaintiff's statement is vague as
7 claimed therein, Plaintiff will issue a more specific statement
8 pursuant to the court's orders.

9 **III (C).** In Paragraph III (C) Defendant alleges that
10 "Plaintiff's Claims relative to his criminal conviction are
11 Uncertain..."

12 Plaintiff hereby alleges that many of the claims contained in
13 the complaint are unrelated to the crimes with which he was
14 charged and convicted. Plaintiff is not in his complaint asking
15 the court to revisit the matter of the guilt or innocence as to
16 the charges. Defendant's claim is therefore not supported.

17 **Conclusion**

18 Plaintiff therefore prays that the Defendant's motion be denied
19 and that the matter proceed to trial.

20 I declare under penalty of perjury that the foregoing is true
21 and correct.

22
23 Dated: 8-14-08

24
25 By

26 ROBERT J. JONES

27
28